

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

BIGELOW-LIPTAK CORPORATION

Claim No. CU - 3465

Decision No. CU

360

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Carey and Carey
by F. A. Carey, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by BIGELOW-LIPTAK CORPORATION in the amount of \$29,310.93 based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized,

expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

The Secretary of claimant corporation has certified that the claimant was organized in 1955 under the laws of the State of Michigan and that all times between January 1, 1959 and presentation of this claim on May 24, 1967, all of the outstanding capital stock of the claimant has been owned by A. P. Green Refractories, a corporation organized under the laws of the State of Missouri. The record reflects that more than 50 percent of the outstanding capital stock of A. P. Green Refractories has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The records contain copy of claimant's invoices dated December 23, 1959 and January 11, 1960 reflecting the sales to Cia Azucarera Atlantica del Golfo, S.A., of Havana, Cuba, of goods totalling \$191.79 and \$126.00, as to which freight, shipping and other attendant fees increased the total to \$218.64 and \$161.33, respectively. Claimant states that it never received the sum of \$379.97, for this merchandise.

The record also contains several letters from The First National City Bank of New York which reflect that other sales had been made to various consignees in Cuba. In letters dated April 15, 1960, the bank advised that it had collected for claimant's account from Compania Azucarera Mariel, S.A. the sums of \$9,558.05 and \$2,276.88, and that

it was awaiting a dollar reimbursement release from the appropriate Cuban Exchange authorities. By letter dated March 23, 1959, the bank advised that it had entered a collection for \$10,099.08 for the same consignee. Claimant states that it has not received any of these funds. The bank advised further in letters dated December 16, 1959 and June 8, 1960 that it had collected the sums of \$6,865.71 and \$131.24 from the Fundicion McFarlane, S.A. and that it had applied for a dollar reimbursement release but had not received same. Claimant states that it has not received these funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of Act. (See the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the losses occurred on the following dates:

April 16, 1960 as to \$11,834.93,

June 9, 1960 as to \$131.24, and

December 17, 1959 as to \$6,865.71, one day after acknowledgement of collections by the bank;

March 23, 1959 as to \$10,099.08, the date the bank advised that collection had been entered; and

December 29, 1959 as to \$218.64, and

January 22, 1960 as to \$161.33, the date the drafts were due.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that BIGELOW-LIPTAK CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-Nine Thousand Three Hundred Ten Dollars and Ninety-Three Cents (\$29,310.93) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

OCT 4 1967

Edward D. Re
Edward D. Re, Chairman

This is a true and correct copy of the decision
of the Commission entered as the final
decision on March 1967

Theodore Jaffe
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

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